



THE PRESIDENT OF THE STATE

ORDER No. 42-L/CTN OF SEPTEMBER 27, 1995 OF THE PRESIDENT OF THE STATE PROMULGATING THE ORDINANCE ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN VIETNAM

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

*Pursuant to Article 103 and Article 106 of the 1992 Constitution of the Socialist Republic of Vietnam;
Pursuant to Article 78 of the Law on Organization of the National Assembly,*

PROMULGATES:

The Ordinance on the Recognition and Enforcement of Foreign Arbitral Awards in Vietnam which was passed on September 14, 1995 by the Standing Committee of the National Assembly, IXth Legislature, of the Socialist Republic of Vietnam.

**The President of the Socialist Republic of Vietnam
LE DUC ANH**

ORDINANCE ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN VIETNAM

With a view to expanding and developing economic relations with foreign countries; and to protecting the interests of the State as well as the legitimate rights and interests of Vietnamese and foreign organizations and individuals;

Pursuant to Article 91 of the 1992 Constitution of the Socialist Republic of Vietnam; and

Pursuant to the Resolution of the Sixth Session of the Ninth Assembly on the law-making activities for 1995:

This Ordinance prescribes the recognition and enforcement of foreign arbitral awards in Vietnam.

**Chapter I
GENERAL PROVISIONS**

Article 1: Foreign arbitral awards.

In this Ordinance, a "foreign arbitral award" is understood as the award which is made outside the territory of Vietnam by an arbitrator selected by the parties concerned to settle dispute arising from commercial law relations.

"Foreign arbitral awards" also include awards that are made in the territory of Vietnam but not by Vietnamese arbitrators.

Article 2: Principles of recognition and enforcement

1. Vietnamese Courts handle the recognition and enforcement of a foreign arbitral award in Vietnam in case the award is made in, or by an arbitrator of, a country which has together with the Socialist Republic of Vietnam signed or acceded to an international agreement on this matter.

A foreign arbitral award can also be recognized and enforced in Vietnam by Vietnamese Courts on a reciprocal basis without either side having signed or acceded to an international agreement.

2. A foreign arbitral award shall be enforced in Vietnam after it is recognized and its enforcement is ordered by a Vietnamese Court. The enforcement must be carried out in conformity with this Ordinance and provisions of Vietnamese law on the enforcement of civil sentences.

Article 3: Right to request recognition and to order enforcement

The organization and/or individual in favor of which/whom an award is enforced or their legitimate

representatives have the right to request the Court to recognize and enforce a foreign arbitral award in Vietnam, if the organization against which the award is enforced has its headquarters in Vietnam; or the individual against whom the award is enforced resided and/or works in Vietnam; or if the assets related to the enforcement are available in Vietnam at the moment the request is sent.

Article 4: Competent Courts to handle requests for recognition and enforcement

The competent Courts to handle requests for the recognition and enforcement of foreign arbitral awards in Vietnam are the People's Courts of the provinces and cities directly under the Central Government, where the organization against which the award is enforced has its headquarters, or where the individual against whom the award is enforced resides and/or works, or where the assets related to the enforcement are available.

Article 5: Guarantee of the right to appeal or protest

1. A Court decision recognizing or not recognizing a foreign arbitral award may be appealed by the organization or person in question, or by the Procuracy.

2. If a Court decision is not appealed within the time limit provided for in Article 18 of this Ordinance, the decision shall take legal effect.

3. The Supreme People's Court handles appeals against decisions made by the People's Courts of the provinces and cities directly under the Central Government regarding the recognition and enforcement of foreign arbitral awards in Vietnam.

Article 6: Guarantee of the legal of Court decisions on the recognition and enforcement of foreign arbitral awards in Vietnam.

1. Foreign arbitral awards recognized and enforced in Vietnam by Vietnamese Courts have the same legal effect as the already effective decisions made by Vietnamese Courts.

2. The Court decisions, which have taken legal effect concerning the recognition and enforcement of foreign arbitral award in Vietnam, must be strictly implemented by the parties concerned, and respected by State authorities, economic and social organizations, the people's armed forces and all citizens.

In case the organization or individual against which or whom the award is enforced is not willing to implement the effective Court decision, enforcement measures shall be applied in accordance with Vietnamese law.

Article 7: Notification of Court decisions

Immediately after the decision mentioned in Item 1 of Article 14, Item 5 of Article 15, and Item 3 of Article 19, of this Ordinance is made, the Court shall, through the Ministry of Justice, notify the organization or individual requesting the recognition and enforcement of the decision.

Article 8: Guarantee of the right to transfer money and properties related to the enforcement of foreign arbitral awards

The State of the Socialist Republic of Vietnam guarantees the transfer of money and assets acquired from the enforcement of foreign arbitral awards from Vietnam to foreign countries; the transfer of money and assets shall be carried out in accordance with Vietnamese law.

Article 9: Fees

The organizations/individuals sending the request as provided for in Article 10 of this Ordinance shall have to pay fees.

The Government shall stipulate in detail the level of the fees, procedures for their payment and for their management and utilization.

Chapter II

HANDLING OF REQUESTS FOR RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN VIETNAM

Article 10: Requests for the recognition and enforcement of foreign arbitral awards in Vietnam

1. Requests for the recognition and enforcement of foreign arbitral awards in Vietnam shall be sent to the Vietnamese Ministry of Justice.

2. The request mentioned in Item 1 of this Article must include the following:

a) The full name and address of the headquarters of the organization in favor of which the award is enforced; the full name and address of the individual in favor of whom the award is enforced; or the organization's or the individual's legal representatives in Vietnam, if available.

b) The full name and address of the headquarters of the organization against which the award is enforced; or the full name, place of residence and work of the individual against whom the award is enforced.

In case the organization against which the award is enforced does not have its headquarters in Vietnam; or the individual against whom the award is enforced does not reside and/or work in Vietnam, the name of the Vietnamese location where assets related to the enforcement are available must be clearly mentioned;

c) The request of the organization/individual in favor of which/whom the award is enforced.

3. Requests written in foreign languages must be translated into Vietnamese, and the translations must be duly certified in accordance with Vietnamese law.

Article 11: Papers attached to the requests

1. Attached to the requests provided for in Article 10 of this Ordinance shall be papers stipulated in international agreements which the Socialist Republic of Vietnam has signed or acceded to as mentioned in Item 1, Article 2 of this Ordinance.

In case the aforesaid international agreements do not mention the papers to be attached to the requests or in case there is no relevant international agreement the following papers must be attached to the request:

a) The original foreign arbitral award or its copy duly certified in accordance with Vietnamese law.

b) The original agreement on arbitration or its copy duly certified in accordance with Vietnamese law.

The agreement on arbitration mentioned in Point b Item 1 of this Article is a written document agreed upon by the parties on the resolution of their disputes which may arise or have already arisen according to the arbitration modalities prescribed by the laws of the countries concerned.

An agreement on arbitration can be an arbitral provision laid down in a contract, or a separate agreement on arbitration concluded by the parties after a dispute arises. The conclusion of this agreement can be done by way of correspondence.

2. The attached papers in foreign languages must be translated into Vietnamese, and the translations must duly certified in conformity with Vietnamese law.

Article 12: Transfer of files to the Court

1. Within 7 days from the receipt of the request and other legal papers, the Ministry of Justice shall transfer the file(s) to the competent Court provided for in Article 4 of this Ordinance.

2. In case the Ministry of Justice has already transferred the file(s) to the Court, but later received a notice from the competent body of the foreign country mentioned in Point c, Item 1, Article 16 of this Ordinance, saying that the foreign arbitral award is being handled, or has been overruled, or the implementation of the award has been suspended, the Ministry of Justice shall send a written notice to the Court, which shall make an appropriate decision in accordance with Points a and c of Item 1, Article 14, Item 3, Article 19, and Item 4, Article 20, of this Ordinance.

Article 13: Receipt and study of file(s)

1. Upon receipt of the file(s) from the Ministry of Justice, the Court has to study them and notify the organization/individual against which/whom the award is enforced, and the Procuracy of the same level.

2. The Court has the right to request the organization/individual which/who has sent the request to explain matters that are not clear in the file(s).

Article 14: Preparation for the handling of the request

1. Within two months from the receipt of the file(s), the Court, depending on each case, shall make one of the following decisions:

a) Temporary suspension of the handling of the request in case the Court has received a written notice from the Ministry of Justice informing that the competent body of the foreign country was considering the possibility of overruling, or suspending the implementation of, the foreign arbitral award.

b) Suspension of the handling of the request if the requesting organization/individual withdraws the request; or the organization/individual against which/whom the award is enforced implements it of its own free will; or the organization against which the award is enforced has been dissolved or gone bankrupt, whose rights and liabilities have been settled in accordance with Vietnamese law; or the individual against whom the award is enforced died, whose rights and obligations are not inherited.

c) Suspension of the handling of the request in case a written notice is received from the Ministry of Justice informing that the competent body of the foreign country has canceled, or suspended the implementation of, the foreign arbitral award;

d) Suspension of the handling of the request and returning the file(s) to the Ministry of Justice if they are beyond the Court's authority; if the organization against which the award is enforced does not have its headquarters in Vietnam, if the individual against whom the award is enforced does not reside and/or work in Vietnam, or the location where assets related to the enforcement of the award are available cannot be found;

e) Opening a Court session to handle the request.

In case a clarification of stipulation in Item 2, Article 13 of this Ordinance is requested, the time limit can be extended for two months.

2. The Court shall open a session to handle the request within 15 days from the date the decision mentioned in Point e, Item 1 of this Article is made. Within 7 days after the decision to open the Court session is issued, the Court has to transfer the file(s) to the Procuracy of the same level.

Article 15: Court session to handle the request

1. A request shall be handled at a Court session by a panel of three judges, one of whom shall be in the chair.

2. A prosecutor from the Procuracy of the same level must participate in the session. In case the procurator is absent, the Court session must be postponed.

3. The Court session shall be held in the presence of the lawful representative of the organization against which the award is enforced, the individual against whom the award is enforced, or of his/her lawful representative. These persons shall be summoned to the Court in accordance with Vietnamese law.

The handling of the request shall continue if the lawful representatives of the organization against which the award is enforced, the individual against whom the award is enforced, or his/her lawful representative request the Court to hold the session in their absence; or if they are absent without plausible reasons after two official summons.

4. While handling the request, the panel does not retry the dispute already settled by the foreign arbitrator, but only examines and compares the foreign arbitral award and the attached papers with the provisions of this Ordinance, other provisions of Vietnamese law and international agreements which the Socialist Republic of Vietnam has signed or acceded to, in order to make decision.

5. After considering the request, the attached papers and evidence, if any, and hearing the persons summoned and the Procurator, the Panel shall discuss and decide the case by majority of votes.

The panel of judges has the right to make a decision to recognize and enforce, or not to recognize and enforce, a foreign arbitral award.

Article 16: Cases in which a foreign arbitral award is not recognized

1. a foreign arbitral award shall not be recognized and enforced in Vietnam if the organization/individual against which/whom the award is enforced has legitimate evidence for the Court to confirm that:

a) The parties to the agreement on arbitration mentioned in Item 1, Article 11 of this Ordinance, are not legally capable of signing that agreement in accordance with the law applied to each party; agreement on arbitration is not legally valid under the law of the country which was chosen by the parties, or under the law of the country where the award was made, in case the parties did not choose the law to be applied for that agreement;

b) The organization/individual against which/whom the award is enforced was not given timely and proper notice on the selection of the arbitrators and the procedures for resolving the dispute through

arbitration; or for other legitimate reasons this organization/individual cannot exercise its/his or her rights of proceedings.

c) The foreign arbitral award is made over a dispute which was not requested for settlement by the parties or beyond the request of the parties to the agreement on arbitration. In case the decision on a requested issue can be separated from one not requested for settlement through arbitration, the decision on a requested issue can be recognized and enforced in Vietnam.

d) The composition of the arbitral body and/or procedure for resolving the dispute through arbitration vary with the agreement on arbitration or with the law of the country where the award was made, in case the agreement on arbitration does not stipulate the matters;

e) The arbitral award has not yet become binding on these parties;

f) The arbitral award has been overruled or suspended by the competent authority of the country where the award was made, or of the country the law of which applies to the rendering of awards.

2. A foreign arbitral award is not recognized and enforced in Vietnam if the Court decides that:

a) Under Vietnamese law the dispute shall not be resolved by way of arbitration;

b) The recognition and enforcement of the foreign arbitral award in Vietnam are contrary to basic principles of Vietnamese law.

Article 17: Sending a copy of the Court decision to the Procuracy

Immediately after the decision mentioned in Item 1, Article 14, and Item 5, Article 15 of this Ordinance, is made, the Court shall send a copy of that decision to the Procuracy of the same level.

Article 18: Appeals

1. Within 15 days from the date the Court made the decision mentioned in Points a, b, c and d of Item 1, Article 14, and Item 5, Article 15 of this Ordinance, the parties, or their lawful representatives, have the right to appeal the decision.

The appeal must clearly state the reasons and the protest.

In case the parties concerned are not present at the Court session to hear the appeal, the time limit for the appeal is counted from the date a copy of the decision is delivered to them; if the appeal has expired and there are justifiable reason for this delay, the time limit for the appeal is counted from the date the obstacles causing the delay have been removed.

2. The Procuracy of the same level or the Supreme People's Procuracy has the right to appeal the Court decision mentioned in Points a, b, c and d of Item 1, Article 14, and Item 5, Article 15 of this Ordinance.

The time limit for the appeal by the Procuracy of the same level is 15 days, and that by the Supreme People's Procuracy is 30 days, starting from the date of the Court's decision.

Article 19: Hearing of Appeals

1. The Supreme People's Court shall hear the appeal against a decision by the People's Court of the province or city under the Central Government within one month from the date the appeal is received; if explanations are necessary as stipulated in Item 2, Article 13, of this Ordinance, the time limit is extended for two months.

2. The panel to hear the appeal shall be composed of three judges, one of whom being in the chair.

The procedure for hearing appeals is similar to that for hearing requests provided for in Article 15 of this Ordinance.

3. The panel has the right to keep intact, or to partly or fully change, the decision made by the People's Court of the province or city under the Central Government; to temporarily suspend or to suspend the appeal in cases the appellant withdraws the appeal; or the Procuracy withdraws the appeal, or there are reasons for doing so as provided for in Points a, b and c, Item 1, Article 14 of this Ordinance.

The decision by the Supreme People's Court is final and effective.

Article 20: Enforcement of foreign arbitral awards

1. Within 15 days from the date the decision on the recognition and enforcement of a foreign arbitral award in Vietnam becomes effective, the Court shall send a copy of that decision and a copy of the award to the enforcement agency in accordance with Vietnamese law on the execution of civil verdicts.

2. The enforcement of foreign arbitral awards in Vietnam must be carried out in accordance with the Vietnamese law on civil verdicts enforcement.

3. In case a written notice is received from the Ministry of Justice to the effect that the foreign competent authority is considering the possibility of overruling or suspending the implementation of the foreign arbitral award that has already been recognized to be enforced in Vietnam, the Head of the civil verdicts enforcement agency shall make a decision to temporarily suspend the enforcement of the award, and send a copy of that decision to the Court which made the decision on the recognition and enforcement of the foreign arbitral award in Vietnam.

The Head of the civic verdicts enforcement agency may take necessary measures to ensure the continued enforcement of the foreign arbitral award if so requested by the organization/individual in favor of which/whom the award is enforced.

4. Immediately after receiving the written notice from the Ministry of Justice saying that the competent foreign authority has already overruled or suspended the enforcement of the foreign arbitral award, the Court which made the decision on the recognition and enforcement of the award in Vietnam shall make a decision repealing its previous decision, and send a copy of this decision to the enforcement agency.

Immediately after receiving the decision of the Court, the Head of the civil verdicts enforcement agency shall issue a decision to suspend the enforcement of the foreign arbitral award.

Chapter III FINAL PROVISIONS

Article 21: Application of international agreements

In case an international agreement which the Socialist Republic of Vietnam has signed or acceded to, contains provisions contrary to the provisions of this Ordinance, the provisions of the international agreements shall prevail.

Article 22: Court's refusal to handle the recognition and enforcement of foreign arbitral awards

In case a decision made by a Vietnamese arbitrator or a request by a Vietnamese organization/individual on the recognition and enforcement of an arbitral award in a foreign country is rejected by the competent authorities of that country on the ground of discrimination, Vietnamese Courts have the right to apply according retaliatory measures to the handling of requests for the recognition and enforcement of arbitral awards by that country in Vietnam, or to requests made by organizations/ individuals of that country regarding this matter.

Article 23: Effectiveness of Ordinance

This Ordinance takes effect from January 1st, 1996

Article 24: Implementation provision

The Government, the Supreme People's Court, and the Supreme People's Procuracy within their respective competence shall issue detailed regulations for the implementation of this Ordinance.

**On behalf of the Standing Committee of the National Assembly
Chairman**

NONG DUC MANH